



Texas Board of Chiropractic Examiners

Thursday, March 11, 2021

BOARD MEETING: 9:01 A.M. – Final Adjournment at 12:23 P.M.

William P. Hobby Building
333 Guadalupe St., Suite 3-825
Austin, Texas 78701

*****NOTICE: This Board meeting was conducted electronically on the Internet via video conference. *****

BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners (Board) met on March 11, 2021, to consider and act as necessary on matters within the jurisdiction of the Board, which are listed on the agenda established for this meeting.

1. Call to order and roll call:

Action Taken: Board President Dr. Mark Bronson called the meeting to order at **9:01 A.M.**
Board Secretary Dr. Scott Wofford called the roll.

Present Members:

Mark Bronson, D.C.
Michael Henry, D.C.
Nicholas Baucum, D.C.
Mindy Neal, D.C.
Debra White, D.C.
Ebony Todd, J.D.
Scott Wofford, D.C.

Absent Members:

Gus Ramirez, Public Member
Brandon Allen, Public Member

Board Staff Present:

Patrick Fortner, Executive Director
Christopher Burnett, General Counsel
Jennifer Hertsberg, Director of Operations
Sarah Matthews, Director of Licensing
Norma Rodriguez, Director of Enforcement
James Elliott, Field Investigator, Dallas
Joseph McLaughlin, Staff Attorney



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Seven of the nine Board members were present and Dr. Bronson announced that a quorum was established.

2. Discussion and approval of the minutes for the Board meeting held on November 19, 2020:

Action Taken: NEAL **MOVED** and HENRY **SECONDED** to approve the minutes from the November 19, 2020 Board meeting. The Board **APPROVED** the motion unanimously.

At this time, Mr. Fortner noted that Mr. Allen had arrived. Dr. Bronson announced that eight of the nine Board members were present.

3. President's Report:

Dr. Bronson began by acknowledging and thanking Board staff for their service as well as thanking the broader licensee community for their professionalism.

Dr. Bronson then discussed recent activities of the Board:

- On January 29, 2021, the Texas Supreme Court published its decision regarding the litigation between the Board and the Texas Medical Association in favor of the Board. Dr. Bronson thanked the Texas Supreme Court for its decision and noted that it will allow the Texas chiropractic community to fulfill its mission within its statutory scope of practice.

Dr. Bronson then announced future events:

- Dr. Bronson will attend the next Federation of Chiropractic Licensing Boards (FCLB) finance committee meeting on March 17, 2021.
- On April 22, 2021, FCLB is hosting an open forum for comments on proposed FCLB resolution. Dr. Bronson will be receiving questions on his Nerves in Chiropractic Resolution offered last year.
- On May 1, 2021, the FCLB will hold its annual congress via webinar. Dr. Bronson will attend as delegate and Dr. Wofford will attend as alternate delegate.
- On May 14-15, 2021, the National Board of Chiropractic Examiners (NBCE) Part 4 Exams will be conducted at Parker University in Dallas, with Dr. Bronson serving as chief examiner and Drs. Baucum and Wofford serving as examiners.
- In June of 2021, the NBCE Part 4 Test Committee will meet in Greely, Colorado. Dr. Baucum will represent the Board on that committee.

4. Board Committee Reports:

a. Rules Committee

- Dr. Henry explained that as the Board's rule update project winds down, the committee will be able to examine rule proposals from individual Board members on a more detailed basis and encouraged the members to share any proposals they had with him in the near future.

b. Enforcement Committee

- Dr. Baucum announced that the committee would be having informal settlement conferences next week and would engage in case review the following week.
- Dr. Baucum also announced that the Board's former Director of Enforcement had expressed interest in assisting the Board's investigators with its Houston case workload. The Board members and staff briefly discussed the idea and were generally in favor. The Board recommended that Mr. Fortner consider this potential staffing solution.

c. Education Standards Committee

- Dr. White announced that the committee had approved 2 new courses for continuing education credit and discussed the progress on the updates to the Board's Jurisprudence Examination.
- She also announced that the committee looked forward to incorporating the Texas Supreme Court's decision in its consideration of prospective new continuing education courses.

d. Licensing Committee

- Ms. Todd announced that she had nothing to report other than items already included on the agenda.

5. Executive Director and Staff Reports:

a. Executive Director

- Mr. Fortner discussed his testimony in front of the Senate Finance Committee and House Appropriations Committee. This included staffing budget concerns and moving expenses relating to the Board's new office space.
- The Board was also notified that it would be receiving room to transition its servers to the new office, which was a positive development.
- Dr. Henry asked a question for licensing staff about the enhanced security features of the updated database, which would address the State Auditor's Office concerns.
- Mr. Fortner then recognized Ms. Rodriguez for her 5 year anniversary of service to the agency.

b. Director of Operations

- Ms. Hertsenberg's report included a financial update into the second quarter of Fiscal Year 2021. She noted that the Board is on track with its current expenditures and revenues. She also noted that the agency would not need to have its budget cut at all due to its savings from the previous fiscal year.
- There was some brief discussion of reduced travel expenses due to the transition to remote meetings during the pandemic.

c. Director of Licensing

- Ms. Matthews's report included comparisons between licensing data from the 1st quarter of Fiscal Year 2020 with the current data for Fiscal Year 2021.

d. Director of Enforcement

- Ms. Rodriguez reported that 43 cases had been closed since September 1, 2020, with 25 cases closed since the last Board meeting. 26 cases would be reviewed at the next Enforcement Committee meeting.
- Dr. Wofford complimented the Enforcement staff on their work during the pandemic.
- Mr. Fortner noted that he expected complaints relating to facemask usage in clinics to be reduced due to the recent changes regarding statewide policies by the Office of the Governor.

6. Public Comment:

No members of the public requested an opportunity to comment except on items already listed on the agenda for the meeting.

7. Discussion of the Board's response to the Covid-19 pandemic:

Dr. Bronson began by discussing the Board's first notices regarding Covid-19 before the national declaration of emergency.

Mr. Fortner then discussed the agency staff's ability to continue operations remotely.

Dr. Henry asked about staff plans regarding potential changes as pandemic restrictions begin to wind down. Mr. Fortner noted that as long as the Governor's disaster declaration remained in place, staff would continue to work remotely as needed.

Dr. White asked Ms. Rodriguez a question regarding complaints about mask wearing in clinics.

The Board members articulated that they expect licensees to continue to adhere to recommended policies to protect the health of patients.

8. Discussion of possible changes to the Board's continuing education requirements and recommendations for changes to the current continuing education rules:

Dr. White noted that she expects the Continuing Education Committee will begin expanding approval of out-of-scope continuing education in conformity with the recent Texas Supreme Court decision.

Dr. Henry noted that he did not expect continuing education requirements to change in the immediate future.

Mr. Burnett noted that there has been increased interaction between staff and continuing education providers to clarify recent rule changes and expressed hope that other providers would seek feedback from Board staff as well.

9. Discussion of the practice of massage therapy under a licensee's supervision:

Dr. Bronson discussed the background of the relationship between chiropractors and licensed massage therapists (LMT's). This included the emergency closure of massage parlors during the pandemic and the need for LMT's to seek employment at chiropractic clinics.

Mr. Burnett then discussed the legal framework underpinning the ability of chiropractors to employ and delegate procedures to LMT's. Mr. Burnett noted that a chiropractor who employs two or more LMT's is required to obtain a massage establishment license under the jurisdiction of the Texas Department of Licensing and Regulation (TDLR).

Dr. Henry added that a chiropractor should not refer to an unlicensed individual under their delegation who performs massage services as a LMT.

Dr. Bronson then recognized Amy Gonzalez, D.C., to provide public comment on the issue. Dr. Gonzalez noted her experience with employing LMT's and stated that she felt the Board did not need to take any rulemaking action on the subject.

8. Discussion of possible changes to the Board's continuing education requirements and recommendations for changes to the current continuing education rules:

Dr. Bronson returned to this item to allow Cynthia Tays, D.C., to comment on potential rule changes and to underscore the importance of the requirement that licensees receive continuing education on Board rules.

10. Discussion of compliance with the standards of practice of the chiropractic profession by chain or franchise facilities and their licensees:

Dr. Bronson introduced this item by discussing his patients' experiences with chiropractic franchise locations and how there appear to typically be reduced examinations and documentation at these locations.

Dr. Henry noted that often, the franchises have requirements that they expect their individual franchisees to meet, and that the Board's role is to enforce minimum standards of safety. He added that the experience at an individual franchise can often vary widely from location to location.

Dr. Wofford discussed his experience with a specific franchise and noted its increased examination, diagnosis, and referral standards.

Dr. Baucum added that as the Board is a complaint driven agency, only a patient complaint can lead to an investigation.

Dr. Henry asked staff what level of oversight the Board can provide over franchises without a facility registration requirement. Mr. Burnett explained that without a legislative change, it was difficult to see such a possibility.

Dr. Wofford and Dr. Bronson discussed whether the best option for asserting influence over non-licensee facility owners who belong to a franchise might be to discuss complaints with the franchise corporate headquarters. Mr. Burnett pointed out that the Board can also request an Attorney General's opinion on the subject.

Dr. Bronson then recognized Ms. Michele Quattlebaum, J.D., for comments on the subject. Ms. Quattlebaum discussed her experience representing licensees who have been pressured to take illegal actions by non-licensed clinic or franchise location owners. She observed that many clinic owners are simply unaware of laws and rules regulating chiropractic and insurance billing. She suggested potentially requiring facility owners to obtain education and training.

Dr. Wofford asked Mr. Burnett whether the Board could prohibit convicted criminals from owning clinics. Mr. Burnett responded that it is unclear what jurisdiction the Board can exert over non-licensed facility owners. He did suggest the potential for a rule prohibiting licensees from being employed by individuals convicted of insurance fraud.

Dr. Baucum suggested asking licensees to disclose who they are employed by during their license renewals as a way to obtain information on clinic owners.

The Board requested a staff report on what percentage of complaints are received against franchises for the next Board meeting.

11. Discussion and possible action on requests for a Criminal History Evaluation pursuant to Texas Occupations Code §201.313:

a. Kurt Kangas

The staff recommendation was to allow the applicant to apply for a Texas chiropractic license and take the Texas Jurisprudence Examination upon graduation from chiropractic college, contingent on the applicant having no future disciplinary actions or convictions. Dr. Bronson invited the applicant to address the Board.

Action Taken: BAUCUM MOVED and HENRY SECONDED to accept the staff recommendation. The Board **APPROVED** the motion by a vote of 7 ayes to 1 nay, with Ms. Todd voting nay.

b. Evan Hall

The staff recommendation was to allow the applicant to enroll in chiropractic college and upon graduation, allow the applicant to apply for a Texas chiropractic license and take the Texas Jurisprudence Examination, contingent on the applicant having no future disciplinary actions or convictions.

Dr. Henry pointed out that the applicant's work on turning his life around after his convictions had been admirable.

Dr. Baucum expressed concern regarding the serious nature of the applicant's criminal convictions. Dr. Bronson invited the applicant to address the Board. Ms. Todd noted that the applicant accepted responsibility for his actions and appeared to have completely turned his life around.

Action Taken: TODD MOVED and WHITE SECONDED to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

12. Discussion and action on proposed cease and desist orders pursuant to Texas Occupations Code §201.6015 and Texas Government Code §2001.056:

a. Rodney Martin Maticcik, unlicensed, TBCE Case No. 2019-310

Mr. McLaughlin announced that this item would need to be tabled until the next Board meeting.

13. Discussion and action on proposed agreed orders pursuant to Texas Occupations Code §201.504(a)(1):

a. Jade Malay, License No. 6310, TBCE Case Nos. 2018-180 and 2018-195

The staff recommendation was that the Board accept the agreed order.

Action Taken: HENRY MOVED and WOFFORD SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

b. Chad Everett Glines, License No. 10536, TBCE Case No. 2020-003

The staff recommendation was that the Board accept the agreed order.

Action Taken: WOFFORD MOVED and NEAL SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

c. Arthur Boyd Bradley, License No. 11059, TBCE Case Nos. 2020-045 and 2020-093

The staff recommendation was that the Board accept the agreed order.

Action Taken: HENRY MOVED and WOFFORD SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

d. Douglas Lee Nelson, License No. 5180, TBCE Case No. 2018-191

The staff recommendation was that the Board accept the agreed order.

Action Taken: HENRY MOVED and WHITE SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

e. Michael James Carr, License No. 12011, TBCE Case No. 2018-201

Mr. McLaughlin announced that upon review by the Enforcement Committee and staff, this case had already been closed with no violation by the licensee. Therefore, there was no agreed order to discuss for this case and it was now closed.

f. Michael T. Reid, License No. 9424, TBCE Case No. 2020-144

The staff recommendation was that the Board accept the agreed order.

Action Taken: HENRY MOVED and WOFFORD SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

g. Gerald Zachary Parker, License No. 10766, TBCE Case No. 2019-041

The staff recommendation was that the Board accept the agreed order.

Action Taken: BAUCUM MOVED and WOFFORD SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

h. Nathaniel Eli Pochucha, License No. 10938, TBCE Case No. 2019-096

The staff recommendation was that the Board accept the agreed order.

Action Taken: HENRY MOVED and TODD SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

i. Ralph D. Stokes, License No. 6487, TBCE Case Nos. 2020-049 and 2020-097

The staff recommendation was that the Board accept the agreed order.

Action Taken: NEAL MOVED and BAUCUM SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

Action Taken: At 11:27 A.M., Dr. Bronson allowed for a short break.

Action Taken: At 11:40 A.M., Dr. Bronson reconvened the meeting.

14. Discussion and action on adopting proposed new Board Rule 22 TAC §74.1 (Substance Abuse Testing and Monitoring of Applicants):

Mr. Burnett reminded the Board members that the proposed new chapter 74 rules are a codification of the Board's existing procedures regarding substance abuse testing and monitoring. He also discussed the comments received on the proposal and recommended adopting the proposed rule with a non-substantive change to increase the maximum length an applicant may be placed on probation to 5 years.

Action Taken: HENRY MOVED and NEAL SECONDED to adopt the proposed new rule 22 Texas Administrative Code §74.1 as published in the Texas Register with a non-substantive change to increase the maximum length an applicant may be placed on probation to 5 years. The Board **APPROVED** the motion unanimously.

15. Discussion and action on adopting proposed new Board Rule 22 TAC §74.2 (Substance Abuse Testing and Monitoring of Licensees):

Mr. Burnett's only additional comment was that this rule is statutorily required and recommended adopting the proposed rule without changes.

Action Taken: BAUCUM **MOVED** and TODD **SECONDED** to adopt the proposed new rule 22 Texas Administrative Code §74.2 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

16. Discussion and action on adopting proposed new Board Rule 22 TAC §75.9 (Closing a Practice):

Mr. Burnett explained that this rule was purely an advisory by the Board to the licensee population and recommended that the Board adopt the rule as proposed without changes.

Action Taken: TODD **MOVED** and HENRY **SECONDED** to adopt the proposed new rule 22 Texas Administrative Code §75.9 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

17. Discussion and action on adopting proposed new Board Rule 22 TAC §78.10 (Prohibitions on Animal Chiropractic):

Mr. Burnett explained that while the Board has no jurisdiction over chiropractic treatments performed on animals as they are outside the statutorily established scope of chiropractic, the purpose of the rule is to allow licensees to perform the treatments as long as there is compliance with rules promulgated by the Texas Board of Veterinary Medical Examiners. He recommended that the Board adopt the rule as proposed without changes.

There was much discussion over whether someone holding themselves out as an animal chiropractor would also be practicing chiropractic under the statutory definition.

Action Taken: NEAL **MOVED** and TODD **SECONDED** to adopt the proposed new rule 22 Texas Administrative Code §78.10 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

18. Discussion and action on adopting the repeal and replacement of 22 TAC §80.4 (Schedule of Penalties):

Mr. Burnett explained that this replacement would update the Board's schedule of penalties to reflect the new rules after the Board's rule update project. No comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY MOVED and TODD SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §80.4 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

19. Requests from Board members for future agenda items:

Ms. Todd requested an opportunity to share for review with the Board her draft newsletter article regarding steps for licensees to avoid misconduct complaints.

Dr. Henry reiterated his request to staff regarding statistics on complaints against licensees who work at franchise locations.

Mr. Burnett asked the Board members for time at the next meeting to update their ethics training. He also asked the Board members whether they would like to receive an update in closed session from the Office of the Attorney General regarding the Board's acupuncture rule litigation.

Mr. Fortner asked the Board members for proposed dates for the next Board meeting.

20. Adjournment:

Action Taken: TODD MOVED and ALLEN SECONDED to adjourn the meeting at 12:23 P.M. The Board **APPROVED** the motion unanimously.

STATEMENT: I affirm that the above is a true and correct rendering of the minutes for the Texas Board of Chiropractic Examiners Board Meeting held on the above date. The minutes from the Board Meeting held on November 19, 2020, were **APPROVED** by the Texas Board of Chiropractic Examiners at its regularly scheduled meeting held on March 11, 2021.



Patrick Fortner
Executive Director
Texas Board of Chiropractic Examiners

March 12, 2021

Date